


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
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CHAMBERS OF  
COLLEEN McMAHON  
UNITED STATES DISTRICT JUDGE

TO ALL COUNSEL IN: *Athineos v. Andromeda*, 13 Civ. 5076 (CM)  
FROM: Judge McMahon   
DATE: October 15, 2015  
RE: Questions from the Bench

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Counsel:

As you both seem to have busy schedules, let me jot down a few questions that have occurred to me as I wrestle with the pending summary judgment motion – which I would like to get decided by the end of the month. You can feel free to respond to my questions in writing, and that will obviate the need for a conference.

First, my recollection is that this case began with Mrs. Athineos facing a threat of eviction from the UN Plaza condominium, in which she has been living for many years, because Andromeda (the record owner of the apartment) had stopped paying the common charges. Do I recall this correctly? I see some passing mention of an eviction proceeding in one of the briefs, but there does not appear to be anything in the record about the status of the apartment. When was the last maintenance payment made by Andromeda? Has Mrs. Athineos been evicted? Are there eviction proceedings ongoing? What, in short, is the status of her residency in the apartment?

Second, has the issue of third party beneficiary been raised in this case – as in, whether Mrs. Athineos could be deemed a third party beneficiary of the contract between Andromeda (as owner of Unit 29A) and the UN Plaza Condominium Association pursuant to which Andromeda, as owner of the apartment, is required to pay the common charges on the apartment, in exchange for which UN Plaza is required to permit Andromeda's designee (Mrs. Athineos, according to letters provided by her) to occupy the apartment "without any encumbrances?" The complaint pleads a hodge-podge of causes of action, but they all seem to advert to the purported agreement between Mrs. Athineos' father and her former lover, the late Mr. Kulukundis. Is it possible that she has standing, either as third party beneficiary or on some other theory, to sue for Andromeda's breaching the contract that requires it to pay common charges and taxes (just like

any other owner of a condominium apartment)? Is this something that has come up in the eviction proceeding? I am sure there would be many tricky issue raised if this were an issue in the case, and I am trying to understand whether this or any similar theory is being pursued.

Finally, defendants refer to other actions in which the issue of the purported entustment and money management agreement have been raised, but there is no indication of the status of those actions. Could someone please enlighten me?

I am concerned to get this right, so I appreciate your attention and thank you in advance for addressing these issues.